No. 80-781

DEC 11

MICHAEL RODAK, JR.

IN THE

# Supreme Court of the United States

OCTOBER TERM 1980

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INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC, and LOCAL 449, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC,

Petitioners,

VS.

WESTINGHOUSE ELECTRIC CORPORATION,

Respondent.

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## RESPONSE BY WESTINGHOUSE ELECTRIC CORPORATION TO THE IUE'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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## RESPONSE BY WESTINGHOUSE ELECTRIC CORPORATION TO THE IUE'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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In the present case the International Union of Electrical, Radio and Machine Workers (hereinafter the "IUE") has taken the unusual step of filing a Petition For A Writ Of Certiorari (hereinafter the "IUE's Petition") even though it was the party which prevailed in the court below. The IUE's Petition advises that that unusual step was taken because: "In order to permit the Court to review this case simultaneously with *County of Washington v. Gunther,* No. 80-429, *cert. granted,* November 3, 1980, the union plaintiffs have filed this petition for a writ of certiorari . . . rather than wait six weeks for Westinghouse to file its petition [for a writ of certiorari]." IUE's Petition at 5. "It is for this reason that [the IUE] petitioners have determined to precipitate the issue by filing this petition." IUE's Petition at 14.

Westinghouse did not wait six weeks to file its own Petition For Writ Of Certiorari (hereinafter the "Westinghouse Petition"). Rather, on the same date hereof, the Westinghouse Petition has been filed. As counsel for Westinghouse had previously advised the IUE and other courts, the Westinghouse Petition was filed as promptly as practicable in light of said counsel's prior commitments to other cases. In its own Petition, Westinghouse requests that a writ of certiorari be granted to review the decision below and that the case be taken for briefing and oral argument on the merits. This case could be scheduled for argument at the same time as *Gunther*. The briefing schedule herein could be adjusted as deemed appropriate by the Court.

*Response by Westinghouse.*

Because Westinghouse was the party aggrieved by the decision below and because the denial of a writ of certiorari would be highly detrimental to Westinghouse and would actually be advantageous to the IUE, Westinghouse prepared its own Petition for Writ of Certiorari which contains, in its perception, a more complete presentation of the nature of this litigation than the admittedly more hastily prepared IUE's Petition. That Westinghouse Petition is independent of the IUE's Petition and contains, in its own right, all of the elements required in a petition for a writ of certiorari. In addition, Westinghouse's Petition contains factual and legal material responsive to the various elements and contentions set forth in the IUE's Petition. Accordingly, as part of the instant Response By Westinghouse To The IUE's Petition For A Writ Of Certiorari, Westinghouse incorporates by reference herein the material set forth in Westinghouse's Petition.

Moreover, Westinghouse submits that the Court should consider said Westinghouse Petition, filed simultaneously herewith, as the basis for considering the grant of a writ of certiorari for the following reasons:

1. Westinghouse, as the party aggrieved by the decision below, would be the party injured by the denial of a writ of certiorari.

2. Accordingly, the Westinghouse Petition has been made more complete than the IUE's Petition which was filed to "precipitate the issue" for the Court's consideration. IUE's Petition at 14.

3. Thus, the Westinghouse Petition presents a more extensive discussion of the issues that would be involved in the trial of this case (as well as other cases), if the "equal work" standard recognized by

the district court as a basis for summary judgment is disregarded under Title VII of the Civil Rights Act of 1964, as was done by the Third Circuit. We believe that this more complete discussion of the nature of this case, found in the Westinghouse Petition, is a sounder basis upon which to consider and grant a writ of certiorari.

4. Since Westinghouse is the party with the burden of convincing a majority of the Court that the decision below should be reversed, it should have the opportunity to present opening and closing briefs and argument. This would occur if Westinghouse's Petition For Writ Of Certiorari is the one granted by the Court.[1]

5. We respectfully submit that the filing of a petition by the IUE, as a party which entirely prevailed below, is a practice which has unnecessarily complicated the pleadings before this Court and the normal processing of this case.

For all of the above reasons and also for those set forth in Westinghouse's Petition For Writ Of Certiorari,

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1. In this regard, we also note that in the *Gunther* case, the employer is, likewise, the party which will present opening and closing briefs and argument.

we respectfully submit that Westinghouse's Petition For Writ Of Certiorari should be granted and the Petition filed by the IUE should be denied.

Respectfully submitted,

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